The Polynesian:

PUBLISHED WEEKLY AT HONOLULU, Hawaiian Islands.

Abraham Fornander, . . . Editor.

Business Cards.

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Office in the East corner of 'Makee's Block,' on Kaahumanu street, Honolulu. Draw Bills of Exchange on Messrs. Grinnell, Minturn & Co., New York; Henry A. Peirce, Esq., Boston; and Messrs.

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Importers and Commission Merchants—Dealers in General Merchandise, and Agents for the Sale of Island Produce. -ALSO-

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Dealer in General Merchandise, Fire-Proof Store corner Kaahumanu and Queen Streets, opposite Makee's Block.

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And every variety of Gentlemen's superior Furnishing Goods.

Store in Makee's Block, formerly occupied by W. A. Aldrich, Esq., fronting on Queen street, Honolulu, Oahu.

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SAM'L H. DOWSETT. LUMBER MERCHANT,

Will furnish Building Material of every description, at los Orders from other Islands solicited. Yard on corner of

Fort and Queen streets. C. H. LEWERS,

Lumber and Building Materials, Fort st., Honolulu. 14-tf D. N. FLITNER,

CONTINUES his old business at the new store or Kanhumanu street.

Chronometers Rated by observations of the sun and stars with a transit instrument accurately adjusted stars with a transit instrument accurately adjusted. to the meridian of Honolulu. Part given to fine watch repairing. Sextant and Quadrant glasses silvered and adjusted. Charts and Nautical instruments constantly on hand and for

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02 DO OFFICE-COURT HOUSE, UP STAIRS. CI If

Business Cards.

H. W. SEVERANCE, AUCTIONEER. AND COMMISSION MERCHANT. Fire-Proof Store, Robinson's Building.

QUEEN STREET, HONOLULU. Will continue business at the new stand. 40 tf

THOMAS SPENCER,

BYRON'S BAY, HILO, H. I.

Will keep constantly on hand, an extensive assortment of ever description of goods required by Ships and others. The highest price paid for Island Produce. Money advanced for Bills of Exchange at reasonabl

CALIFORNIA LLOYDS.

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N. LUNING, JAMES OTIS, JAMES B. HAGGIN, J. MORA MOSS. JAMES PHELAN. LAPAYETTE MAYNARD, ALDRICH, WALKER & CO., Agents, Honolulu, H. I.

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GEORGE CLARK, BOOT AND SHOE MANUFACTURER

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ALLEN & BERRILL SUCCESSORS TO

GEORGE W. MACY, Kawaihae, Hawaii. Will continue the General Merchandise and Shipping busi-ness at the above port, where they are prepared to furnish the justly celebrated Kawaihae Potatoes, and such recruits as are required by Whale Ships, at the shortest

notice and on the most reasonable terms. J. WORTH, AUCTION & COMMISSION MERCHANT.

GENERAL MERCHANDISE. Ships supplied with Recruits and money advanced on Bills of Exchange. HILO, Hawaii.

CALIFORNIA MUTUAL MARINE INSURANCE COMPANY,

SAN FRANCISCO. THE UNDERSIGNED having been appointed Agents for the above Company, beg lea-dic that they are now prepared to issue

MARINE INSURANCE POLICIES On cargo, freight and treasure to all parts of the world.

H. HACKFELD & CO. Honolulu, Aug. 21, 1861. 17-tf Merchant's Exchange

THE PROPRIETOR OF THE MERchant's Exchange Hotel begs to inform the Public that he

MARBLE BOWLING ALLEYS!

Mr. W. B. CARROLL, will have charge of the Alleys, and all those wishing to engage in this health-giving game are to give him a call, the Proprietor pledging himself that nothing shall be wanting on his part to render his Alleys the most agreeable place of resort for recreation and amusement in Ho

NOTICE. WHEREAS THE UNDERSIGNED HAS BEEN INFORMED on WHEREAS THE UNDERSIGNED HAS BEEN INFORMED on good authority that great irregularity exists in the taking and killing of the wild cattle on the mountains on Hawaii, belonging to His Majesty and to the Government, by parties who claim or pretend to claim right under bills of sale from His Majesty or from the Government, and whereas, from the nature of the country and other causes it is almost impossible to place the country and other causes it is almost impossible to place agents to guard the interests of His Majesty and of the Government, and whereas all parties having legal claims on the said wild cattle have already had time sufficient, if they have used

wild cattle have already had time sufficient, if they have used fue diligence to remove the same:

Now therefore, the undersigned hereby gives notice to all parties who purchased wild cattle running on the mountains on Hawaii, previous to the 1st day of January 1857, to remove the same if not already removed, on or before the 1st day of May next. after which time, parties taking wild cattle will be pr L. KAMEHAMEHA. Interior Office, | Jan. 24, 1858.

Hides,

Goat Skins, Tallow

Old Copper and

Composition, DURCHASED AT THE HIGHEST MARKET C. BREWER & CO.

GOAT SKINS, DURCHASED AT THE HIGHEST MARKET ALDRICH, WALKER & CO.

Honolulu Water Works.

NOTICE.—All Persons having Water Privileges are hereby notified that their Rates for the half year
ending July 1, 1868, will be due and payable in advance at this
office, on the first day of January next, 1863, and if not paid before the tenth day of that month, their water will be hable to be
stopped off without further notice.

By Water Office foot of Nananu Street.

HENRY PRENDERGAST, Honolulu, Dec. 18, 1862. (34 tf) Sup. Hon. Water Works.

LAW REPORTS! GEORGE W. BROWN,

Notary Public.

The First Volume for the Hawaiian Reports, comprising many of the most important Decisions and Rulings of the Superior Courts of this Kingdom during the ten years ending with 1856, compiled by George M. Robertson.

Price five dollars bound in call. foreign Advertisements.

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128 SANSOME St., SAN FRANCISCO, CAL.

Particular attention given to the purchase, shipment and sale of Merchandise, to forwarding and transhipment of goods, the chartering and sale of vessels, the supply-ing of whaleships, and the negotiation of Exchange. EXCHANGE ON HONOLULU in sums to suit.

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Particular attention paid to forwarding and transhipment of merchandise, sale of whalemen's bills, and other exchange, in-surance of merchandise and specie under open policies, supplying whaleships, chartering ships, etc. 117 and 119 California-street.

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RICE & Co., Shipping and Commission Merchants, DEALERS IN SHIP CHANDLERIES, &c.,

HAKODADI, JAPAN, WILL ATTEND TO THE sales of Merchan-W dise, as also to the purchase and shipment of all kinds of Goods experted from that country. Mr. RICE is the Commercial Agent for the United States at that port, and having already resided there for about five years, is enabled by his acquaintance with the country, to offer many advantages in the discharge of

any business that may be entrusted to their	r House.
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WM. T. COLEMAN & Co.,	
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MESSRS. C. A. FLETCHER & CO. COMMISSION MERCHANTS

GENERAL AGENTS HARODADI, JAPAN,

BEG TO INFORM OWNERS AND MASTERS OF SHIPS about to visit the port of Hakodadi, that they are prepared take Consignments and do business on the usual terms.

By arrangements with Home Insurance Offices, Messrs. FLETCHER & CO. can take risks on Oil, or other shipments of Hakodadi, Yesso, Japan, 4th July, 1859.

CHARLES BREWER, COMMISSION MERCHANT, Boston, U. S. Refer to R. W. Wood and C. BREWER 2D.

WM. FAULKNER & SON, 131 SANSOME ST., SAN FRANCISCO, GENT FOR JAMES CONNER & SONS, U. S.

GOODS

Bark "Richmond!"

THE UNDERSIGNED WOLLD OFFER for sale the cargo of the bark "Richmond," from New Bedford, cor sisting in part of-

Cut Spikes, all sizes, Cut Nails, all sizes, 14-gall Sugar Shooks, 31-gall, barrel Shooks, Hoop iron for barrel and keg Shooks, 5 bales heavy English Burlaps, 44 inch, Oak and locust Treenails, 12 M Bricks,

Hemp Twine, 1 Lumber Wagon, suitable for country use, New Smoking and Chewing Tobacco, ass'd brands, Small Manila Cordage, 1 in., 1% in., 1% in., 1% in., Lampblack, French Yellow, Burden Blocks, Bris. Beef, Bris. Pork, American Butter, Cases Davis & Son's Pain Killer,

Also On Hand! Ex Comet & Yankee

FROM SAN FRANCISCO! A superior lot of California Brooms, Nos. 1, 2, 3,

Cases White Zine, in 25-th tins, California Potatoes, California Sugar and Syrup Shooks, Bris. Vinegar 8-hooped Pails, A superior lot of Cranberries, in kegs, Gunny Bags, &c., &c. WILCOX, RICHARDS & CO.,

Fire-proof Store, Queen Street. Per "Young Hector."

Champagne Cider! FEW CASES OF THIS DELICIOUS BEV-erage, fresh from the Manufacturer, received per the ung Hector."

Young Hector."

A very superior article. For sale by

C. BREWER & CO. Co-Partnership Notice! MR. FREDERICK BANNING HAS THIS day been admitted as a Partner in our business.

ED. HOFFSCHLAEGER & STAPENHORST. Honolulu, January 1, 1863. 36 3m

Foreign Advertisements.

AMMUNITION

HONOLULU, MARCH 21, 1863

TARGET 12 FEET SQUARE. shooting at 500 yards, ELEY'S

Eley's Ammunition For Sporting or Military Purposes.

ENFIELD

CARTRIDGES.

DOUBLE Waterproof Central Fire Caps Felt Wadding to prevent the leading of Guns, Wire Cart-ridges for killing game, &c., at long distances, Breech Londing Cartridge Cases of superior quality for Shot Guns and Riffes. Contractors to the War Department for Small Arms

Jacob's Rifle Shell Tubes, Cartridges and Caps for Colt's, Adams', and other Revolvers. Enfield's Ammunition, and Ball Cartridges for Whitworth and Henry's Rifles, also for Westley Richard's, Terry's, Wilson's, Prince's and other Breech Loaders. Bullets of uniform weight made by compression from Soft Refined Lead

SAUCE-LEA & PERRINS' WORCESTERSHIRE SAUCE

EYEY BROS., Gray's-Inn-Road, London, W. C.

WHOLESALE ONLY.

PRONOUNCED ONNOISSEURS TO BE THE ONLY GOOD SAUCE AND APPLICABLE

Every Variety of

a Medical Gentleman at Medras, to his Brother Worcester, May, 1851:

EXTRACT of a Letter from

Caution.

LEA & PERRINS Beg to caution the public against spurious imitations of their celebrated

WORCESTERSHIRE SAUCE

L. & P. have discovered that several of the Foreign Markets have been supplied with SPURIOUS IMITATIONS, the labels closely resembling those of the genuine Sauce, and in one or more instances the names of L. & P. forged.

L. & P. will proceed against any one who may manufacture or vend such imitations, and have instructed their correspondents in the various parts of the world, to advise them of any infringement of their rights.

ASK FOR LEA & PERRINS'S SAUCE, ** Sold Wholesale and for Export, by the Proprietors, Wordester; Messrs. CROSSE & BLACKWELL; Messrs. Barclay and Sons, London; &c., &c.; and by Grocers and Oilmen un

HONOLULU STEAM BISCUIT BAKERY!



THE UNDERSIGNED WOULD RESPECT-1 fully inform his friends and the public generally that the Honolulu Steam Biscuit Bakery being now in full operation, he is prepared to furnish Pilot and Navy Bread, Water Crackers and every description of

FANCY BISCUITS All of superior quality and at PRICES TO DEFY COMPETITION!

Parties furnishing their own flour for ship bread will have it made up at the lowest possible rates. SHIP BREAD REBAKED! Orders from the other islands promptly attended to.
ROBERT LOVE,

Orders in Honolulu for shipping to be left with Messrs. Wilcox, Richards & Co., Queen St. 11-tf

JAMES A. BURDICK COOPER & GUAGER!

IN REMOVING HIS BUSINESS TO his new cooperage on the esplanade, Fort Street, takes this opportunity of returning his sincere thanks to his friends and the public in general, for

> SPECIAL NOTICE! begs respectfully to inform the public, that, in connection with after carry on the



Wheelwright BUSINESS!

PIANOS TUNED! Instructions on the Piano Forte! PIANOS TUNED & REPAIRED

GUITARS, and all other Stringed Instruments. CHAS. DERBY, Royal Hawaiian Theatre.

cash or order for the amount of their shipment at the highest market rates.

H. W. SEVERANCE, January 16, 1863.-38tf

English Scythe Hooks. JUST Received ex & Galllel" a few Patent Scythe Hooks, the best article for cutting rice ever yet imported, at A. S. CLEGHCRN,

AND FOR SALE BY THE UNDERSIGNED,
A Dr. S. P. Townsend's Compound Fluid Extract of Sarsaparila [38 tf] JANION GREEN & CO.

Co-Partnership Notice! MR. J. G. DICKSON HAS THIS DAY BEEN and firm name of LEWERS & DICKSON. C. L. LEWERS.

Honolulu, March I, 1863.

The Polynesian.

SUPREME COURT,-In Probate. On Appeal. In the matter of the will of John Ely, of Kahua, Hilo. The judgment of the Court was delivered by Justice ROBERTSON, as follows: This cause comes before the full Court on appeal from

the judgment of Justice Robertson, at Chambers, admitting the will propounded to probate. The will presented was made on the 20th day of October, 1858 three years previous to the death of the testator, which took place under melancholy circum-

stances in the month of November, 1861. After careful consideration of the evidence laid before us, we are satisfied that the will was duly executed by Mr. Ely, at a time when he was of sound mind and disposing memory, and that he declared it, or signified it to be his will, in the presence of the subscribing witnesses, and we deem it unnecessary to review the objections raised by Counsel for the contestant, touching

these points. But on behalf of the contestant, who is the only surviving child and heir at law of Mr. Ely, a further ground of objection to the validity of the will has been raised, namely: That as it is in proof that the testator, who was an illiterate man, was incapable of reading the will himself, it is incumbent on the proponent to prove that the will was read over to him by some other person, before the Court can be judicially satisfied that the testator fully understood the contents of the instrument; and that this precaution is rendered more than usually imperative, in this case, from the fact that the proponent, who is a beneficiary to a comparatively large amount under the will, wrote the instrument himself. Indeed, it has been argued by Counsel that the peculiar terms of the will and the circumstances under which it was prepared and executed, show that the proponent abused the testator's confidence, with a view to his own aggrandizement.

The document offered for probate reads as follows: "In the name of God, Amen: I, John Ely, of Kahua, in the District of Hilo, Island of Hawaii, Hawaiian Islands, being of sound mind and memory, do make, publish, and declare, this my last will and testament, in manner following, that is to

say:

"First.—I give and bequeath to my wife, Naipu, the sum of five hundred dollars, as also I give and devise to her all that real estate belonging to me, and known as Kahua, together the beneditaments and appurtenances thereunto bewith all the hereditaments and appurtenances thereunto be-"Tell Lea & Perrins longing, or in any wise appertaining; to be used and enjoyed hat their Sauce is highly by her during the term of her natural life; and from and immediately after her decease, I give and devise the same to my son, Daniel Ely, his boirs and assigns, forever. And in addition to the above, I give and bequeath my wife. Naipu, all the furniture of the house upon said land as it now is, or may be at my decease, together with my horse and four head of cattle "Second.—I give and bequeath to my son, Daniel Ely, the sum of one thousand five hundred dollars, together with all de bis or moneys due me from Hawaiian natives, and all moneys due me from John Nomore, and William Burk, and John Avery Simmons; as also I give and devise to said son, Daniel Ely, aforesaid, his heirs and assigns, all that tract or parcel of land situate on Kulaimanu, in the District of Hilo, belonging to me, together with all the hereditaments and appurtenances to me, together with all the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, to have and hold the same to the said Daniel Ely, his heirs and assigns forever. "Third.—I give and bequeath to my nieces, Miss Mary Hughes, (daughter of my dear departed sister, Ellen Hughes, of North Wales, Great Britain,) and her sister (name to me unknown), the sum of two thousand dollars each.

"Fourth.-I give and bequeath to my friend, Benjamin Pit-man, of Piihonua, Hilo, Hawaii, the sum of one thousand dollars. And lastly.-I give and bequeath all the rest, residue and remainder, of my personal estate, of what nature or kind soever, (after paying the several legacies, and all funeral ex-penses, debts, dues and demands against me,) to Benjamin Pitman, of Pithonua, Hilo, Hawari, whom I hereby appoint my xecutor of this my last will and testament; hereby revoking all former wills by me made.
"In witness whereof, I have hereunto set my hand and seal,

this, the twentieth day of October, in the year of our Lord one usand eight hundred and fifty-eight (L. S.) John Ely." The foregoing instrument was at the date thereof declared to us by John Ely, the testator therein mentioned, to be his last will and testament; and he at the same time acknowledged to us, and each of us, that he had signed and sealed the same; and we thereupon, at his request, and in his presence, and in the presence of each other, signed our names thereto as attesting witnesses.

George E. Tucker.

DON JOSEF SAIVIC. GILBERT WALLER As a general rule, the will of a person sui juris, which is proved to have been executed and attested with sufficient formality to meet the requirements of the law, and to have been made at a time when the testator was a free agent, and possessed of sufficient mental capacity to make a valid dispo-sition of his property, will be admitted to probate, as a matter of course. The proponent having made proof to the satisfac-tion of the Court to this extent, has done all that can be re-

render it necessary for the Court to seek for further proof that the testator knew and understood the contents of the will, and intended to dispose of his property in the manner set out in the On behalf of the contestant in the present case, it is said there are two facts here which call for the exercise of extraor-dinary vigilance on the part of the Court, and which ought to be held to constitute of themselves, a conclusive objection to the will being pronounced valid, unless satisfactorily overcome. First.-It appears that the testator, who was a Welshman by birth, was unable to read the will himself, and it is man by birth, was unable to read the will himself, and it is not expressly proven to have been read to him; and, secondiz, the proponent, who is also the executor named in the will, is a beneficiary to a considerable amount. This two-fold objec-tion will be most conveniently examined, by reversing the or-der in which it has been stated, because if it should appear that the large bequest to the proponent was the consequence of anything having the appearance of undue influence, or of conduct calculated to excite any suspicion of fraud, that cir-cumstance would enhance the force of the first part of the objection; but if the contrary should appear clear in the estima-tion of the Court, then the first branch of the objection would

be entitled to comparatively little weight.

So far as we can gather from the testimony, Mr. Ely was by no means a weak-minded man. Sober, steady and parsimonious, and possessed, although illiterate, of a sufficient degree of business intelligence to have acquired and preserved a con-siderable amount of property, which he well understood how to take care of, he was not at all a person likely to be easily coaxed or trightened into making an involuntary disposition of his worldly goods. A short time previous to the execution of the document now before the Court, he had been taken ill, A Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

Type Foundry, and Dealers in all kinds of Printing Materials.

This sincere thanks to his friends and the public in general, for the support and patronage which they have been pleased to grant to him for the past ten years, and hopes that by attention to business and promptness in the execution of all orders intrusted to business and promptness in the execution of all orders intrusted to him, to merit a continuance of their favors.

The Type Foundry, and Dealers in all kinds of Printing Materials.

This sincere thanks to his friends and the public in general, for the document now before the Court, he has sent for to attend him.

Fearing, apparently, that his illness might terminate fatility, he dispatched his son Daniel to the village of Hilo, a distance of ten miles, with a message for Mr. Pitman to come to him, but without stating for what purpose. tance of their favors.

50 1v

NOTICE!

THE UNDERSIGNED

THE UNDERSIGNED deal better. After a private interview with Mr. Ely, Mr. Pitman enquired of the physician, if the testator was, in his
opinion, in a fit condition to make his will, to which the Doctor replied in the affirmative. Mr. Pitman thea said that Mr.
Ely desired every one, except himself, to leave the room, as
he was about to make his will. In about an hour afterwards,
Mr. Pitman came out from the bed-room and asked Dr. Saivie
to be a witness to the will, and sent also for Messts. Tucker
and Waller, for the same purpose. When the witnesses entered the bed-room where the testator was lying, they saw
there a small table with pens and ink upon it. Mr. Pitman
took up from the table the will, which had just been written
and was not folded, and informed the witnesses that they had and was not folded, and informed the witnesses that they had been sent for to attest Mr. Ely's will. Mr. Ely said, "Yes, yes, my will," in his usual quick way. Mr. Pitman then, according to the recollection of the witnesses Tucker and Waller, said he would read the will if Mr. Ely desired it, but he said, "No, no." Mr. Pitman then said to the witnesses that it was not necessary for them to know the contents of the will-they could attest the signature of the testator, and that would do. He then read over the certificate of attestation, and the will was signed by Mr. Ely. and by the four witnesses in his presence. Dr. Saivic testifies that Mr. Ely signified his assent to the will, when Mr. Pitman read the certificate of attestation, but that Mr. Pitman did not offer to read the will itself. The

testator's wife, and his son, the contestant, were in or about the house at the time. These, then, are the circumstances under which this will was executed; and where, it may be asked, is the evidence of undue influence, or of suspicious conduct, on the part of the proponent? The onus is upon the contestant to show it, affirmatively. There is no evidence of a sudden change in the tes-tator's intentions respecting his property, or of a variation from instructions. The proponent did not, when he heard of Mr. Ely's sickness, rush to his bedside and importune him to leave him his property. This is not the case of a mentally weak man overcome by superstitious fears, or by the coercion of a Daniel, that therefore undue influence must have been used, unless the court must assume that any man, however respec-table his character, will abuse the confidence of a friend who relies upon him, whenever the opportunity is offered. That a testator should prefer others to his own children is no new testator should prefer others to his own children is no new thing. It is only a circumstance, in any case, which requires the court to look narrowly to the evidence. To quote the language of Mr. Surrogate Bradford, of New York, in the case of Weir es. Fitzgerald (2 Bradford's Rep., p. 67), "Kind offices and faithful services, in ordinary course, tend to influence the mind in favor of the party thus acting; and case should be taken not to confound the natural action of the human feetings in this respect, with positive dictation and control exercised over the mind of the testator." ings in this respect, with positive dictation and control exercised over the mind of the testator. The application of this language is emphatically just in the present case.

But there is no express proof that the will was read to the testator, and therefore, says the contestant, it does not appear,

affirmatively, that he knew its contents. There can be no question that, in any case like the present, it is extremely deduestion that, in any case like the present, it is extremely desirable and most satisfactory to have such proof, as the best evidence of a knowledge of contents; but there is no conclusion of law which renders that particular mode of proof a sine qua non. On this point of knowledge of contents, Dr. Lushington, in Duraself es. Corfield (1 Robertson's Ecc. Rep., 51), having referred to the case of Barry es Butlin, and speaking in reference to the doctrine in that case, said: "The doctrine is, that proof of the knowledge of the contents may be given

in any form; that the degree of proof depends on the circum stances of each case, that in perfect capacity knowledge of confents may be presumed, but that when the capacity is weakened, and the benefit to the drawer of the will is large, the presumption is weaker, the suspicion is stronger; the proof must be more stringent, and the court must be satisfied of the knowledge of the centents beyond the proof of execution by the testater." (I Jarman on Wills, 24). Mr. Baron Parke, in delivering the judgment of the appellate court, in the case of Barry cs. Butlin, in the course of his remarks said: "If, by Barry es. Butlin, in the course of his remarks said: "If, by these expressions, the learned Judge (Sir John Nicholl) meant merely to say, that there are cases of wills, prepared by a legatee, so pregnant with suspicion that they ought to be pronounced against in the absence of evidence in support of them, and that extending to clear proof of the actual knowledge of the contents by the supposed testator; and that instructions proceeding from him, or the reading over the instrument by or to him, are the most satisfactory evidence of such knowledge, we fully concur in the proposition so understood; in all probability the learned Judge intended no more than this. But if the words used are to be construed strictly; if it is intended to be stated as a rule of law, that in every case in which the party preparing the will derives a benefit under it, the onus party preparing the will derives a benefit under it, the onus party probands is shifted, and that not only a certain measure, but a particular species of proof is therefore required from the party propounding the will, we feel bound to say that we con ceive the doctrine to be incorrect. The strict meaning of the term onus probandi is this, that if no evidence is given by the party on whom the burthen is cast, the issue must be found against him. In all cases this onue is imposed on the party propounding a will; it is in general discharged by proof of ca acity and the fact of execution; from which the knowledge of ad assent to the contents of the instrument are assumed."— 'All that can be truly said is, that if a person, whether attor ney or not, prepares a will with a legacy to himself, it is, at most, a suspicious circumstance, of more or less weight, ac-most, a suspicious circumstance, of more or less weight, ac-cording to the facts of each particular case; in some of mo-weight at all." (I Jarman on Wills, 45, note.) According to the doctrine recognized by these eminent authorities, the pro-ponent in the case before us, having made proof of the due ex-ecution of the will and the full capacity of the testator, might, in the absence of any evidence of undue influence or traud, be fairly considered to have discharged the onus which the law casts upon him. But the proof on the part of the proponent goes beyond this. Two of the subscribing witnesses Messrs. Tucker and Waller, testify that Mr. Pitman offered to read the will in their presence, if desired by the testator, and that he prevented it. True, the testimony of Dr. Saivic is in conflict with that of the others on this point. But there are the observation and recollection of two against those of one, all being equally intelligent and disinterested. And if Messrs. Tucker and Waller are correct in their remembrance, then the court would be warranted in presuming conclusively, that the will had previously been read to the testator—that he well knew its contents, and, as all the testimony renders probable, desired to conceal them from his own family and others. It is in vain to argue that a designing beneficiary might have read the will falsely to the testator, or persuaded him to decline having it read before the witnesses, unless we are bound to believe that virtue and probity have forsaken the earth, or that every man should be esteemed a villain until be shall have proved the reverse. If the recollection of Messrs, Tucker and Waller is to be relied on, then Mr. Pitman was justified in not

There is another point connected with this part of the case. which was forcibly put by counsel for the proponent, and is, in our opinion, of considerable weight. It is argued that the instrument itself bears intrinsic evidence of having been framed under the immediate dictation of the testator. Else, it is asked, whence the large bequest to his two nieces, in Wales, couched in the peculiar language in which it stands? It cannot be denied that this clause of the will does carry on its face the stamp of honesty and the impress of the testator's own mind, his memory having called up those near and dear to him through a long space of time, to be favorably remembered, now that he was about to make a final disposition of his prop erty. It is incredible that a party whose first object was to aggrandize himself, should have committed the eggregious erthe relation of nieces, and living at so great a distance, wher the same amount added to the bequest in favor of Daniel Ely, would have had so clear a tendency to answer the argument so strongly urged against the validity of the will, that its pro risions are inconsistent with the natural affection of a father towards his son.

reading the will in the presence of strangers without the tes

As indicative of the will having been drawn as the instructions fell from the testator's lips, we may notice also, the pre-cise enumeration of the animal's bequeathed to his wife; the specific statement of the names of certain persons who owed him sums of money; the bequest of the land at Kulaimanu, to Daniel, and the occurrence of a specific legacy to Mr. Pitman, before the residuary beque-t. It has been argued that Mr. Pitman must have known, when he wrote the will, that Mr. Ely's title in Kulaimanu was worth little or nothing, and that the bequest of it to Daniel was of no value. But it is clear that Mr. Ely always had enjoyed certain rights there, and Daniel himself has lived on that land, under his father. The testator's estimate of his title appears from the fact that he thought himself in a position to obtain a Royal Patent, on commutation, long after the will was made. He must have thought, therefore, that the bequest of the land to Daniel was valuable. Great stress has been laid upon certain testimony given by

the contestant and Mr. Metcalf, which it is argued, tends to

prove that the testator did not know the contents of this in-

trument. The contestant states that one night shortly after

the execution of the will, he overheard a conversation between his father and mother in bed, when the former told the latter that he had left her in his will, some money, and the latter that he had left her in his will, some money, and the home-stead at Kahua; that he had bequeathed to Daniel some money, and the land at Kulaimanu, which, Daniel says, he thought was his own; mentioned also the debts due to him by natives and others, which he said he had given to Daniel; said he had not bequeathed anything to his relatives in Wales, and that he had left the money lying at interest in Mr. Pit-man's hands entirely undisposed of, because he might live a considerable time yet and need money for himself, and that specific money would go to somebody after he died. quired of him, unless the party contestant is enabled to point to some peculiar or unusual circumstances in the case, which Now this is a very singular conversation, if correctly re-ported by the contestant. So far as the testator's statement to his wife goes, it accords with the instrument, except as to the legacy, in favor of the two nieces. And it is worthy of remark that he did not reveal the piecise amount of money he had given to his wife, or to his son. He did not say that they were to have all his property between them. If that had been his desire, why should he have made a will at all? There would have been no propriety in his doing so, unless he had desired to take away from the share to which Daniel would have been entitled by the Statute, and increase the share of his wife, a supposition which, in view of the testimony touching their do-nestic relations, would be ridiculous on its face. The reason, mestic relations, would be ridicalous on its race. The reason, too, which he assigned for not having disposed of the funds in Mr. Pitman's hands, shows that he merely wished to meet the prying curiosity of Naipu, in such a way as would not excite the jealousy and anger she and Daniel would naturally have felt if they had been informed of the real state of the matter. He knew that Naipu was sufficiently ignorant to be imposed on by the idea that if he had disposed of the funds in Mr. Pitman's

hands by will, he could not have used any of them afterwards himself; but that Mr. Ely was not so ignorant on the subject

as to believe this, is abundantly proven. Again, it may be asked: Can it be believed, in the absence of any appurent

cause for such a strange course, that having set about making a testamentary disposition of his estate, he would have left

one-half of it unappropriated? The desire of concealment is patent throughout, else why did not the testator invite his son

to be present at the preparation of his will? After it was executed, why did he not retain it among his other papers, or place it in the keeping of Daniel, who attended to business for him the last few years of his life? These are pregnant facts to show his wish to conceal the contents from his wife and We deem it unnecessary to refer at length to the conversa tion which Mr. Metcalf testifies to having had with the testa-tor, after Mr. Pitman had left the Kingdom. We could not have drawn the same inferences from what the testator said, that the witness drew. Any weight that might otherwise have been attached to the remarks then made by Mr. Ely, is much detracted from by the way in which they were induced. The following language of Mr. Surrogate Bradford may be cited with propriety in noticing that part of the argument based upon the testator's declarations, as reported by the contestant and Mr. Metcalr: "I know very wall how much conversations of this kind are to be distrusted. From motives of policy, for the sake of peace, to secure kindly attention, or from other motives often operating upon the human mind, especially in the ase of an artful or wary man; or again, in an unguarded mo ment, in a spirit of exasperation, or boasting, or threatening, loose declarations are frequently made of testamentary disposi-tions, contemplated or executed, which are not in harmony

with the truth." (Allen es. the Public Administrator, I Brad ford's Rep., page 392.) ford's Rep., page 392.)

There is one incident disclosed by the testimony which tells strongly in favor of the proponent's good faith, and is worthy of particular notice. About five months previous to the murder of Mr. Ely and his wife, Mr. Pitman left Hilo for Honolulu, on his way to the United States. Before leaving, he placed the will in the keeping of the Rev. Titus Coan, at Hilo, with instructions to deliver it to Mr. Ely, if he should call for it. Mr. Ely was informed of the place where the will was deposited, both by Mr. Pitman and Mr. Coan. Now if the instrument had been fraudulently concotted, or if it had contained bequests which the testator never intended, why should the proponent have run the needless and imminent risk of disthe proponent have run the needless and imminent risk of dis-covery by leaving it behind, when he could as easily have carried it with him? Judging from the testimony, he might have anticipated that the matter would be stirred up after he had

anticipated that the matter would be stirred up after he had gone, either from curiosity or some other motive.

Having thoroughly weighed the voluminous evidence laid before us, we have no hesitation in saying that, to our apprehension, the instrument presented for probate makes very much such a disposition of the testator's property as it was probable he would make under the circumstances in which he was placed. Keeping in view various facts connected with his domestic relations, affecting both his wife and son, it was not probable, we think, that he would besto a upon either of them a large share of his property. The liberal provision for his nieces, is in accordance with the fact that, about three months previously, he had forwarded to Miss Mary Hughes the sum of five hundred dollars, showing that the children of his heloved setter were affectionately remembered by him: THE UNDERSIGNED will pay CASH (from this date) the highest market rate for good Paddy, delivered at his Auction Sales Room, Queen street, and will return the containers.

37 Natives or foreigners on the other islands by shipping Paddy to our consignment, may receive account sales with the testator's intimate friend, Mr. Pitman, than to his son Daniel, that therefore undue influence must have been used. and having set apart for the several persons who had claims upon his bounty by relationship the amounts which he considered just, there remained no one upon whom he was so likely to bestow the residue of his estate as Mr Pitman, his intimate and trusted friend of many years standing, at whose departure

from Hawaii he shed tears of genuine grief.

At the hearing before the full Court, counsel for the contestant was understood to say that he did not mean to charge the proponent directly with having fraudulently framed this instrument, contrary to the wishes of the testator, although some parts of his argument conveved an imputation of fraud, or the exercise of undue influence; but that he rested the con tion mainly upon the weakness of the evidence of a knowledge of the contents by the testator. This we have always tegarded as the turning point in the cause. Sitting here as a Court of Probate, it is our province to pass upon the facts, as well as upon the law involved; and, putting the question to ourselves, as we would to a jury, whether or not we are satisfied, upon a consideration of all the evidence, that the testafor was acquainted with the contents of this instrument, and that they conform to his real intentions? we answer, clearly, that we are satisfied, beyond a reasonable doubt, that the will before us is genuine. The judgment below is therefore affirmed. Mr. BATES, 6-r Proponent. Mr. HARRIS, for Contestant,

Bonolulu, 18th March, 1863.